



UNITED STATES DEPARTMENT OF COMMERCE
Pat nt and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SK

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/004,803 01/09/98 EPPS

J

┌

PM82/1221

└

EXAMINER

STRIMBU,G

ART UNIT	PAPER NUMBER
----------	--------------

3634

DATE MAILED: 12/21/00

24

John R. Merkling
310 South Yaupon
Richwood TX 77531-2229

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/004,803

Applicant(s)

Epps et al.

Examiner

Gregory J. Strimbu

Group Art Unit

3634

☒ Responsive to communication(s) filed on Jul 19, 2000 + Oct 16, 2000.

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-5, 7, and 9-16 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-5, 7, and 9-16 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Jan 9, 1998 is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on Jul 19, 2000 is ☒ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3634

It should be noted that the restriction requirement is not longer valid since claim 17 has been canceled.

Drawings

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on July 19, 2000 have been approved.

The drawings, however, are objected to because the lead line for the uppermost reference character "29" in figure 2 fails to accurately indicate a fastener.

Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect can be deferred until the application is allowed by the examiner.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the proximity sensor is focused upward at an angle that deviates from a vertical direction by not more than about 10 degrees (claim 11), the proximity sensor is directed such that the torso of a person approaching the window is not detected by the proximity sensor (claims 12 and 16), and a projection extending beyond the lens (claim 15).

Art Unit: 3634

Claim Rejections - 35 USC § 112

Claims 1-5, 7 and 9-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as “an arm” on line 8 of claim 1 render the claims indefinite because it is unclear if the applicant is referring to the arm set forth above or is attempting to set forth another arm of the person in addition to the one set forth above. Recitations such as “sufficient inhibit objects” on line 3 of claim 15 render the claims indefinite because they are grammatically incorrect and confusing.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7, 9-12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art of figure 5 in view of Jonsson '912. The admitted prior art of figure 5 discloses a fast food service window comprising a window assembly with at least one movable window member 16, a window operator assembly (not shown, but disposed behind upper frame member 21) mechanically coupled to the movable window member 16, a proximity sensor 60

Art Unit: 3634

electrically coupled to the window operator assembly, wherein the movable window member 16 opens whenever a person is sensed by the proximity sensor 60. The movable window member 16 is opened when an infrared beam is detected by an infrared receiver 62 and is closed when the infrared beam is not detected by the infrared receiver 62. The sensor 60 has an integral emitter 61 and receiver 62. The admitted prior art of figure 5 is silent concerning focusing a plurality of sensors upwardly.

However, Jonsson '912 discloses a sensor 10 having a plurality of integral infrared emitters 14 and sensors 16. The sensors 16 and the emitters 14 are angled upwardly as shown in figure 4. The sensor 10 is angled such that it will only operate the door when a person is in a predetermined desired position and will operate the door when an extended arm of a person is over the proximity sensor.

It would have been obvious to one of ordinary skill in the art to position the plurality of sensors of the admitted prior art of figure 5 upwardly to only operate the door when a person is in a desired predetermined position, as taught by Jonsson '912, to prevent the door from unexpectedly opening, to conserve energy and to increase the working life of the door.

With respect to claims 11, 12 and 16, one with ordinary skill in the art is expected to routinely experiment with parameters so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been no more than an obvious matter of engineering design choice, as determined through routine experimentation and optimization, for one of

Art Unit: 3634

ordinary skill to focus the proximity sensor upwardly at an angle that deviates from a vertical direction by not more than about 10 degrees and to focus the sensor such that the torso of a person approaching the window is not detected by the sensor to ensure that window operates only when desired.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art of figure 5 in view of Jonsson '912 as applied to claims 1-5, 7, 9-12 and 16 above, and further in view of Hagenbook. The admitted prior art of figure 5 is silent concerning a ring which rises above the sensor.

However, Hagenbook discloses a proximity sensor 93 which is surrounded by a ring and a lens system 30 which rises above the sensor 93.

It would have been obvious to one of ordinary skill in the art to provide the admitted prior art of figure 5, as modified above, with rings, as taught by Hagenbook, to more accurately direct the sensor beams to prevent unwanted activation of the window.

Response to Arguments

Applicant's arguments filed July 19, 2000 have been considered but they are not persuasive. The applicant's arguments concerning the sensors not detecting the torso of a person is not persuasive with respect to claims 1-3 since they do not contain such a limitation. The applicant's comments concerning the sensors being directed to detect a person's arm when it is

Art Unit: 3634

over the proximity sensor is not persuasive. Both of the sensors of the admitted prior art of figure 5 and the admitted prior art of figure 5 modified by Jonsson '912 would detect a person's arm when placed over the sensor. Even if the sensors of the admitted prior art of figure 5 and the admitted prior art of figure 5 as modified by Jonsson '912 were to detect a person's torso, as alleged by the applicant, there is nothing to prevent the sensors from also detecting a person's arm.

The applicant's declarations submitted September 13, 1999 have been considered but not found to be persuasive.

The declaration of James C. Epps is not persuasive because it fails to provide objective evidence that an art recognized problem existed in the art for a long period of time without solution. See paragraph 7 wherein the applicant merely states that in his opinion there has been a long felt but unsolved need in the fast food service window industry. The declarant has failed to show that the art recognized the problem and that the problem has existed in the art for a long period of time without solution.

The declaration of Cheri Roell is not persuasive because it fails to meet the requirements as set forth above. The declarant's statement merely provides subjective evidence that Wendy's has had a need for a fast food service window that automatically opens without generating too many false open and/or close operations. The declarant has failed to provide objective evidence that the art has recognized the problem and that this problem has existed in the art for a long period of time. The declarant's statement merely points out that Wendy's has had the need for a

Art Unit: 3634

fast food service window that automatically opens without generating too many false open and/or close operations. Furthermore, the declarant's statements in paragraphs 8 and 9 are not supported by any objective evidence.

The declaration of Ray J. Epps is not persuasive because it fails to meet the requirements as set forth above. There is not objective evidence to support the position that the prior art windows generate too many false open and/or close operations. The statements of the customers of the declarant is not sufficient evidence to show that the art has recognized the problem of too many false open and/or close operations and that there has been a long felt need in the art to solve this problem.

Finally, it should be pointed out that the applicant has admitted on the record that the prior art window shown in figure 5 of the instant application has sensors that point upwardly. See page 6 of the response of July 19, 2000. Therefore, merely claiming that the sensors of the window of the applicant's invention point upwardly and providing declarations in support of such limitation does not define the applicant's invention over the prior art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Note that the applicant has added new claims 11-16 which necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3634

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is (703) 305-3979. The examiner can normally be reached on Monday through Friday from 8:00 A.M. to 4:30 P.M. The fax phone number for this Group is (703) 305-3597. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

12/19/00

GJS

GJS



Daniel P. Stodola
Supervisory Patent Examiner
Group 3600